

## CONTRACT CLAUSES (MCCS) - JUL 2022

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## **1. DEFINITIONS (ACNI 0001 JUN 2022)**

As used throughout this contract, the following terms shall have the meaning set out below:

a. "MR" refers to Business and Support Services Division, Headquarters, United States Marine Corps; "MCCS" refers to Marine Corps Community Services activities; "MCX" refers to the Marine Corps Exchange. MR, MCCS, and MCX are Non-Appropriated Fund Instrumentalities (NAFI).

b. "NAFI" refers to an instrumentality of the Federal Government established to generate and administer nonappropriated-funds for programs and services, including resale activities through MCX, contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

c. "Contract" identifies this contract or any modification thereto.

d. "Contracting Officer" means a person authorized in writing to execute and administer the contract on behalf of MR, MCCS, or MCX. It includes said contracting officer's successor or successors. (NOTE: Only the contracting officer may waive or change contract terms; impose additional contract requirements, issue cure, show cause, or termination notices; or render final decisions according to contract terms.) MR, MCCS, MCX, and other government officials who are by virtue of their positions concerned with the administration and operation of this contract may take certain administrative actions in behalf of the Contracting Officer. These representative officials may conduct inspections, process and collect contract payments, make administrative decisions, and perform other duties of an administrative nature. All questions concerning the authority of these representative officials should be referred to the Contracting Officer.

e. "Contractor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work thereunder, to include that of any subcontractor.

f. The term "Contracting Officer's Representative" (COR) means a person appointed in writing by a Contracting Officer to monitor performance and act as a liaison between the contractor and the Contracting Officer.

## **2. LEGAL STATUS (ACNI 0002 JUN 2022)**

MR, MCCS, and MCHS are integral entities of the United States Marine Corps operating as NAFIs. NAFI contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC Chapter 71), in which event the NAFI will reimburse the United States Government (31 USC §1304 (c)). MCCS procurement is governed by Department of Defense Instruction (DODI) 4105.67 available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/410567p.pdf?ver=2019-03-22-095354-913> and Marine Corps Order 7010.20 available at <https://www.marines.mil/News/Publications/MCPEL/Electronic-Library-Display/Article/900392/mco-701020/>. In accordance with DoDI 4105.67, no appropriated funds of the United States will be obligated, due, or payable to a contractor under this contract. (NOTE: The Federal Acquisition

Regulation (FAR) published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to MCCS procurement except for those provisions of the FAR that have been administratively adopted by MCCS or incorporated by reference in the contract.)

### **3. EXAMINATION OF RECORDS (ACNI 0003 JUN 2022)**

a. This clause is applicable if the amount of this contract exceeds the simplified acquisition threshold and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three (3) years after final payment under the contract. This clause does not require contractor to create or maintain any record that the contractor does not maintain in its ordinary course of business.

b. The Contractor agrees to include paragraph a., above, in all subcontracts that exceed the simplified acquisition threshold when used in performance of this contract.

### **4. CONTRACTOR CERTIFICATION OF COMPLIANCE WITH LAW (ACNI 0114 JUN 2022)**

The Contractor shall use due diligence to prevent and detect criminal conduct and promote an organizational culture that encourages ethical conduct and compliance with law. By agreeing to this procurement the Contractor certifies that it is complying with all applicable federal and state laws.

### **5. GRATUITIES (ACNI 0005 SEP 2021)**

a. The NAFI may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing by the Contracting Officer, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the government or the NAFI with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.

b. In the event this contract is terminated as provided in paragraph 5a above, the NAFI shall be entitled (1) to pursue the same remedies against the contractor as it would pursue in the event of a breach of contract by the contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount determined by the Contracting Officer, which shall not be less than three nor more than ten times the cost incurred by the contractor or by the organization to which the contractor is affiliated that engaged in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### **6. ORAL REPRESENTATIONS (ACNI 0006 JUN 2022)**

This written contract includes the entire agreement between the parties. The NAFI will not be bound by any oral or written representation not included in the written contract or a change or amendments

thereto. Nor will the NAFI be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer.

## **7. CHANGES (ACNI 0007 JUN 2022)**

a. The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following: (a) specifications (including drawings and designs); (b) time or place of delivery; (c) method or manner of performance of the work; (d) NAFI-furnished facilities, equipment, materials, services, or site; or (e) accelerating the performance of work.

b. If any such change causes an increase or decrease in the cost of performing this contract, the Contracting Officer will make an equitable adjustment in the contract price and the contract will be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change.

c. Claims for constructive changes to the contract will not be considered, except for contracts subject to the Contract Disputes Act.

## **8. REPRESENTATIONS (ACNI 0008 JUN 2022)**

The Contractor shall not represent itself to be an agent or representative of the NAFI or any other agency or instrumentality of the United States.

## **9.. ADVERTISEMENTS (ACNI 0009 JUN 2022)**

a. The Contractor shall not represent in any manner, expressly or by implication, that items or services purchased or sold or performed under this contract are approved or endorsed by the NAFI or any element of the U.S. Government. Any advertisement by the Contractor which refers to a military resale or other NAFI activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.

b. The Contractor further agrees that none of its, nor its agent's, advertisements to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, or other media, shall state, infer, or imply that the contractor's products or services are approved, promoted, or endorsed by the NAFI or any element of the U.S. Government. Any advertisement, including cents off coupons, which refers to a NAFI will contain a statement that the advertisement is neither paid for nor sponsored, in whole or in part, by that particular activity.

## **10. SUBCONTRACTING (ACNI 0010 JUN 2022)**

Contractor shall not subcontract any part of the work to be performed without the prior written consent of the Contracting Officer. Any subcontractor used in connection with this contract is the agent of the Contractor and not the agent of the NAFI.

## **11. PROTECTING THE NAFI'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (ACNI 0042 JUN 2022)**

a. The Government suspends or debar Contractors to protect the Government/NAFI's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

b. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

c. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (refer to [www.sam.gov](http://www.sam.gov) for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being (or proposed to be) on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion (or proposed inclusion) on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the NAFI's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment

## **12. ASSIGNMENT (ACNI 0011 SEP 2021)**

Contractor shall not assign its rights or delegate its obligations under this contract without the prior written consent of the Contracting Officer.

## **13. REPRESENTATIVES (ACNI 0012 SEP 2021)**

Contractor is fully responsible for the actions of all contractor employees, agents, and representatives. Books and records of contractor representatives are subject to examination and audit under the Examination of Records clause of the contract.

## **14. TAXES (ACNI 0013 JUN 2022)**

a. Contractor assumes complete and sole liability for all federal, state, and local taxes applicable to the property, income, and transactions of the Contractor. The prices charged the NAFI under this contract will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes which are not applicable:

- (1) by reason of status as a NAFI of the United States government; or
- (2) by reason of MR and MCCS immunity from direct state or local taxation; or
- (3) by reason of federal, state, or local tax exemptions for sales to the U.S. Government; or

(4) otherwise, such as items purchased for export.

b. It will be the sole responsibility of Contractor to demonstrate, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes which are included in the prices charged to the NAFI. The Contracting Officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

c. The Contractor is liable for all taxes applicable to its property and income, and all of its transactions arising out of or in connection with the performance of this contract. The Contractor will not be reimbursed by the NAFI for any direct or indirect tax properly and legally imposed on the Contractor by reason of this contract or otherwise.

d. Sales Tax. Per 4 USC 105, where a state or local law imposes a sales tax on the Contractor's sale of items or services, the sales tax will be collected from the customer and paid directly by the Contractor to the appropriate tax collection agency .

#### **15. PERMITS AND LICENSES (ACNI 0014 SEP 2021)**

Contractor shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the service or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.

#### **16. NON-WAIVER OF DEFAULTS (ACNI 0015 SEP 2021)**

Failure by the NAFI to insist on the strict performance of any provision of this contract, to exercise any right or remedy or, to accept nonconforming services or supplies does not constitute a waiver of any breach of any provision of this contract. Failure to insist on procurement terms and conditions does not waive, affect or impair such terms and conditions or waive, affect or impair the NAFI's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

#### **17. INDEMNIFY AND HOLD HARMLESS (ACNI 0016 JUN 2022)**

a. Contractor shall indemnify, hold harmless and defend NAFI and all other agencies and instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:

(1) The alleged or established violation or infringement of any patent, license, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor;

(2) Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by or resulted solely from the acts or omissions of MR, MCCS, its agents, representatives, or employees.

(3) Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractors, representatives, agents, or employees.

b. The Contracting Officer will give Contractor notice and an opportunity to defend.

#### **18. WARRANTY (ACNI 0018 JUN 2022)**

Contractor warrants that:

a. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by NAFI of the items and is in addition to other warranties of additional scope given by the Contractor to NAFI.

b. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to NAFI by any other clause of this contract.

c. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standards, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent Seal of Approval.

d. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to the NAFI.

#### **19. ITEM SUBSTITUTION AND VARIATION IN QUANTITY (ACNI 0019 SEP 2021)**

No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

#### **20. NON-EXCLUSIVE CONTRACT (ACNI 0020 SEP 2021)**

Unless specified elsewhere, this contract does not establish Contractor as the sole supplier of goods or services to be provided on this military installation.

#### **21. INVOICES (ACNI 0022 JUN 2022)**

a. An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

- (1) Name and address of the contractor.
- (2) Invoice date.
- (3) Contract number or other authorization for supplies delivered, services performed (including order number and contract line item number).

(4) Description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government/NAFI bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (must be the same as that on the contract or on a proper notice of assignment).

(7) Name (where applicable), title, phone number, mailing address of person to be notified in event of defective invoice.

(8) Any other information or documentation required by the contract (such as evidence of shipment). Invoices shall be prepared and submitted in duplicate (one copy shall be marked "original") unless otherwise specified.

b. For purposes of determining if interest begins to accrue under the Prompt Payment Act (31 U.S. Code Chapter 39).

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which check for such payment is dated;

(3) When the due date falls on a Saturday, Sunday, or legal holiday when Government/NAFI facilities and offices are closed, may make payment on the following working day without incurring a late payment interest penalty.

(4) Payment terms (e.g., "net 20") offered by the contractor will not be deemed a "required payment date"; and

(5) The following periods of time will not be included:

(a) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils and food products prepared from edible fats or oils); and

(b) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(6) See applicable contract terms if the NAFI makes payment by Electronic Funds Transfer (EFT). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(7) Discounts. When a discount for prompt payment is taken, the designated payment office will make payment to the contractor as close as possible to, but not later than, the end of the discount period. The discount period is specified by the contractor and is calculated from the date of the contractor's proper invoice. If the contractor has not placed a date on the invoice, the due date is calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. When the discount date falls on a Saturday, Sunday, or legal holiday when NAFI facilities and offices are closed, the designated payment office may make payment on the following working day and take a discount.



## **22. WITHHOLDING (ACNI 0023 JUN 2022)**

The NAFI may withhold payment for:

- a. Amounts due or creditable to the NAFI under this contract, e.g., returns, damages.
- b. Amounts otherwise due or creditable to NAFI.
- c. Any dispute will be processed under the Disputes clause of this contract unless it became due pursuant to another contract which included a Disputes clause.
- d. Further, the Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Construction Wage Rate Requirements Act (formerly known as Davis-Bacon Act) prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **23. DISPUTES (MCCS) (ACNI 0024 JUN 2022)**

- a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S. Code Chapter 71). All disputes arising under or relating to this contract will be resolved under this clause.
- b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment or other relief that is not in dispute when submitted is not a claim under this clause.
- c. Contractor shall submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. A Contractor request shall not be considered a claim unless submitted in writing to the Contracting Officer within 90 days after termination of performance under the contract. This clause will not extend the period for filing claims which is further limited by another clause of the contract. The request shall specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

"I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount requested accurately reflects the amount for which Contractor believes the NAFI is liable.

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(Signature of Individual Authorized to Bind Contractor)"

(NOTE: SUBMISSION OF FALSE CLAIMS IS A VIOLATION OF FEDERAL LAW AND MAY RESULT IN CIVIL AND OR CRIMINAL PENALTIES.)

d. Contractor's request for payment of money or other relief is not a "claim" until:

(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor.

g. The Contractor may appeal the Contracting Officer's dispute decision by mailing or otherwise furnishing the written appeal (two copies) addressed to the Director, MR or, if applicable, Installation Commander, and furnishing a copy of the appeal to the Contracting Officer within 90 days of receipt of the Contracting Officer's decision. The decision of the Director, MR, or Installation Commander is final and conclusive and not subject to further appeal.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay the NAFI an amount equal to the unsupported part of the claim plus all NAFI costs attributable to reviewing that part of the claim.

#### **24. CONTRACTOR LIABILITY (ACNI 0025 JUN 2022)**

a. Except as set out specifically elsewhere in the contract, Contractor shall be liable for costs to the NAFI and other agencies of the United States associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and procurement costs.

b. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In such case, Contractor shall provide prompt written notice to the Contracting Officer; the Contracting Officer, at his option may accept late, partial or substituted

performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by Contractor.

## **25. TERMINATION (ACNI 0026 JAN 2022)**

The rights and remedies provided the NAFI in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.

a. Termination for Convenience. NAFI may terminate performance of work under this contract in whole or in part if the Contracting Officer determines that a termination is in the NAFI's best interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(1) After receipt of a Notice of Termination, and except as otherwise directed in writing by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(a) Stop work as specified in the notice.

(b) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(c) Terminate all subcontracts to the extent they relate to the work terminated.

(d) Assign to the NAFI, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the NAFI shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(e) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(f) As directed by the Contracting Officer, transfer title and deliver to the NAFI:

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the NAFI.

(g) Complete performance of the work not terminated.

(h) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the NAFI has or may acquire an interest.

(i) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (1)(f) of this clause. The Contractor, however, is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(2) The Contractor shall submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 60-day period.

(a) The Contractor shall submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer.

(b) The Contractor may request the NAFI remove those listed items or the parties may enter into an agreement for their storage. Within 15 days of submission of the list, the NAFI will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify and correct list discrepancies upon removal of the items. If the items are stored in accordance with a storage agreement then, the Contracting Officer will verify and correct the list within 45 days from the Contractor's submission of the list or correct the list, as necessary, before final settlement.

(3) After termination, the Contractor shall submit a final termination settlement proposal in writing to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. Contracting Officers will consider final termination settlement proposals only when received within 90 days after notice of termination of any part of performance under the contract. If the Contractor fails to submit a final proposal in the form and manner prescribed by the Contracting Officer within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(4) Subject to paragraph (3) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, may not exceed the total contract price as reduced by the amount of payments previously made and the contract price of work not terminated. The contract shall then be modified, and the Contractor paid the agreed amount. If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall provide a determination in accordance with the disputes clause of this contract.

b. Mutual Termination. In circumstances where a contract has been established, the Contracting Officer may use this section to terminate a contract at no additional cost to the NAFI. Under these conditions the contract may be terminated by mutual agreement of MR or MCCS and the Contractor at any time by contract modification.

c. Termination for Default.

(1) The NAFI may, subject to below subparagraphs (4) and (5) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(a) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(b) Make progress, so as to endanger performance of this contract (but see paragraph (2) of this clause); or

(c) Perform any of the other provisions of this contract (but see paragraph (2) of this clause).

(2) The NAFI's right to terminate this contract under subdivisions (a)(b)(c) above of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(3) If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the NAFI for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(4) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics or pandemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(5) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(6) If this contract is terminated for default, the NAFI may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(7) The NAFI shall pay contract price for completed supplies and services delivered and accepted. The Contractor and Contracting Officer shall negotiate the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to reach a negotiated agreement will be a dispute under the Disputes clause and will be issued as a final decision by the Contracting Officer. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

(8) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the NAFI.

(9) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **26. NOTIFICATION OF DEBARMENT OR SUSPENSION STATUS (ACNI 0028 SEP 2021)**

The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any Federal Department or Agency, or upon receipt of a notice of proposed debarment from another DoD Agency, during the performance of this contract.

## **27. EQUAL OPPORTUNITY BASIC (ACNI 0029 MAY 2021)**

Contractor shall comply with 41 C.F.R. Part 60-1, Subpart A. 41 C.F.R. Subpart 60-1.4, Equal Opportunity Clause is incorporated by reference into this contract.

## **28. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (ACNI 0030 SEP 2021)**

If this contract equals or exceeds \$10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

## **29. EQUAL OPPORTUNITY FOR VETERANS (ACNI 0108 SEP 2021)**

a. Definitions. As used in this clause-- "Veteran" has the meanings given in 38 CFR 3.1.

b. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

c. Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.

## **30. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (ANCI 0106 SEP 2021)**

a. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

b. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

## **31. CONVICT LABOR (ACNI 0032 SEP 2021)**

Except as provided in 48 CFR 52.222-3, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

## **32. DRUG-FREE WORK PLACE (ACNI 0033 SEP 2021)**

To the extent applicable, the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1988 (41 USC 8102. Drug-free workplace requirements for Federal contractors.)

### **33. ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION (ACNI 0034 JUN 2022)**

If this contract is performed in whole or in part on premises owned or under the control of the United States Government, including the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the contract under the "Termination For Default" clause.

### **34. WORKPLACE EATING, DRINKING, AND USE OF TOBACCO PRODUCTS – CONCESSION (ACNC 0551-A MAY 2021)**

a. Contractor personnel are prohibited from eating, drinking, and using tobacco-products (e.g., chewing, smoking, vaping) in the work areas onboard the installation. Eating and drinking must be confined to designated employee break areas only. All indoor areas of facilities on Department of the Navy installations are designated as tobacco-product free and tobacco-product use is restricted to specifically designated tobacco use areas (DTUAs).

b. The local COR will provide the Contractor with the current tobacco-product use policies, location of the DTUA nearest to concession work area, and as necessary, coordinate with installation for additional DTUA.

### **35. ENVIRONMENTAL PROTECTION (ACNI 0035-A JUN 2022)**

The Contractor shall comply with all federal, state and local regulations and abide by all installation and NAFI policies with regard to environmental regulations. Under no circumstances shall the Contractor independently discuss, and/or settle, environmental issues arising under this contract with a United States agency or state or local government without the written concurrence of the NAFI. Applicable regulations include, but are not limited to, installation orders (available from the COR), which includes the following provisions:

a. Disposal of hazardous waste and electronic wastes (e.g. batteries and light bulbs) in installation landfills, as well as any solid waste receptacle on the installation, is strictly prohibited.

b. Any leftover product that is labeled with "danger," "warning," "toxic," "caution," "poison," "flammable," "corrosive," or "reactive" is considered a household hazardous waste. Examples include household items such as paints, pest control agents, adhesives and cleaning supplies. The disposal of household hazardous waste in dumpsters, trashcans or any other trash receptacle is strictly prohibited.

c. Universal waste is a subset of hazardous waste that poses a lower risk to people and the environment than other hazardous wastes. Examples of common universal wastes include batteries (AA, AAA, C-cells, D-cells and button cell batteries); electronic devices; fluorescent light tubes and bulbs; high intensity discharge lamps; mercury switches, thermometers and thermostats; and non-empty aerosol cans. Disposal of universal waste in any trash receptacle is prohibited.

d. Electronic Waste (E-waste). The State of California prohibits E-waste disposal as household waste and requires disposal of E-waste only at authorized locations. The disposal of E-waste in

dumpsters, trashcans, or at any location not expressly authorized to receive E-waste is strictly prohibited.

e. Recyclable materials shall be placed in recycling containers, not in trash containers. Trash shall not be placed in recycling containers.

f. No hazardous materials of any kind, trash/garbage, or other refuse will be dumped or allowed to be introduced into any groundwater basin, stream, or water body.

g. Contractor shall immediately report any violation of environmental regulations currently in progress by calling 911, and report any prior violations of environmental regulations to the installation provost marshal.

### **36. PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL (ACNI 0036 JUN 2022)**

Contractor and any subcontractors shall comply with applicable NAFI identity verification procedures, installation access requirements, and security clearance policies. In addition, Contractor personnel performing contracted services on a government facility/installation shall produce, upon request, personal identification in the form of state or federal identification cards such as a driver's license, passport or other official identification at the Contracting Officer's or COR's request. Contractor personnel, when performing on installations, shall display distinguishing badges or other visible identification that identifies them as contractor personnel and not NAFI personnel. In addition, contractor personnel shall clearly identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

### **37. PERSONNEL SECURITY (ACNH 0047 JUN 2022)**

Contractor and subcontractor personnel that require access, to include physical, system and network access, to Department of Defense (DoD) or NAFI facilities shall comply with DoD and NAFI security requirements.

a. Contractor personnel who require both physical access to the NAFI facility and access to the NAFI system on the Contractor's project under this contract and will require a Common Access Card (CAC) issued by the DoD.

b. Contractor personnel who require only physical access will require a base pass. Contractor personnel who only require network access will require an alternate token. The NAFI will facilitate the issuance of the CAC cards, base passes and alternate tokens. Contractor personnel shall display the CAC and base pass as required by local policy and shall return CAC, base pass and token when access is no longer required under the contract.

c. Network access, to include remote access, requires the use of MCCS computers and access through a MCCS-approved Virtual Private Network (VPN).

d. Contractor personnel shall comply with the processes to control access by foreign nationals to government information, including, but not limited to, system design information, DoD-unique technology, and software or hardware used to integrate commercial technology.



e. Contractor personnel shall also have a favorably adjudicated Access National Agency Check with Inquiries/National Agency Check, Local Agency Checks (ANACI/NACLC) (Tier 3) background investigation prior to contract award, when performing duties applicable to Cybersecurity Workforce and Cybersecurity IT positions outlined in DoD Directive 8140.01. Cyberspace Workforce Management.

f. DoD security requirements for contractors include complying with requirements for current operating system certification and security certification as appropriate. Contractor personnel in support of NAFI projects shall comply with DoD Directive 8140.01. Contractor personnel that will work longer than one month on the Contractor's project under this contract will require a CAC issued by the DoD. MCCS will facilitate the issuance of the cards.

(1) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01-M, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including—

(a) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01-M; and

(b) Appropriate operating system certification for information assurance technical positions as required by DoD 8570.01-M.

(2) Upon request by the Government, the Contractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance functions.

(3) Contractor personnel who do not have proper and current certifications shall be denied access to DoD/NAFI information systems for the purpose of performing information assurance functions.

### **38. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (ACNI 0037 SEP 2021)**

a. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists> . More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> .

c. The Contractor shall insert this clause, including this paragraph c., in all subcontracts.

### **39. BUY AMERICAN ACT – SUPPLIES (ACNI 0109 JUL 2020)**

a. The contractor shall comply with the requirements of 41 USC Chapter 83 and Executive Order 13811, “Maximizing Use of American-Made Goods, Products, and Materials,” which are incorporated by reference in this contract/order. In accordance with 41 U.S.C. 1907, the component test of the Buy American Act is waived for an end product that is a commercially available off-the-shelf (COTS) item. To maximize efficiencies, MCCS has administratively adopted and incorporated herein all available exclusions and exceptions provided by the Federal Acquisition Regulation and/or Department of Defense Supplement for the procurement of COTS items.

b. The Contractor should deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Certificate.”

c. The definitions provided at 48 CFR § 252.225-7001 - Buy American and Balance of Payments Program, are administratively incorporated into this contract/order.

### **40. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT (ACNI 0117 JUL 2022)**

a. For administrative convenience of the NAFI this contract incorporates by reference 48 CFR section 52.204-25. All references to “government” therein shall refer to the NAFI

b. Contractor shall provide the following certifications in accordance with 48 CFR section 52.204-26 directly to the contracting officer:

The Contractor represents that:

(1) It  does,  does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, that it  does,  does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

c. If contractor answers “does” to either b(1) or b(2) above, contractor shall complete representations and provide the NAFI information as prescribed in 48 CFR section 52.204-24.

d. Contractor shall provide to the NAFI recertification when requested by the Contracting Officer and when/if there are changes that are applicable to this clause.

### **41. COMBATING TRAFFICKING IN PERSONS (ACNI 0116 MAR 2022)**

a. For administrative convenience of the NAFI, this contract incorporates by reference FAR 52.222-50, Combating Trafficking in Persons. All references to “government” therein shall refer to the NAFI. If this contract is valued over \$500,000, Contractor shall notify the contracting officer if supplies, other than commercially available off the shelf items, are acquired outside the United States, or if services provided under this contract are to be performed outside the United States.